

No. 14724

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**United States  
Court of Appeals**  
for the Ninth Circuit

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HASKELL PLUMBING AND HEATING COM-  
PANY, a Corporation,

Appellant,

▼S.

JIMMY WEEKS, TOMMY JUDSON, MIKE  
CULLINANE, OLE FRANZ, ROY CALLA-  
WAY, TOM MULCAHY, BEN HOLBROOK,  
JESSE HOBBS and W. VAN SMITH,

Appellees.

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**Supplemental  
Transcript of Record**

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**Appeal from the District Court  
for the District of Alaska,  
Third Division**

**FILED**

**JAN - 3 1956**



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Court of Appeals**  
for the Ninth Circuit

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HASKELL PLUMBING AND HEATING COM-  
PANY, a Corporation,

Appellant,

vs.

JIMMY WEEKS, TOMMY JUDSON, MIKE  
CULLINANE, OLE FRANZ, ROY CALLA-  
WAY, TOM MULCAHY, BEN HOLBROOK,  
JESSE HOBBS and W. VAN SMITH,

Appellees.

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**Supplemental  
Transcript of Record**

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**Appeal from the District Court  
for the District of Alaska,  
Third Division**



In the District Court for the District of Alaska,  
Third Division

No. A-7736

JIMMY WEEKS, TOMMY JUDSON, MIKE  
CULLINANE, OLE FRANZ, ROY CALLA-  
WAY, TOM MULCAHY, BEN HOLD-  
BROOK, JESSE HOBBS and W. VAN  
SMITH,

Plaintiffs,

vs.

HASKELL PLUMBING AND HEATING COM-  
PANY, INC., a Corporation Authorized Under  
the Laws of the State of Washington and Doing  
Business in the Territory of Alaska,

Defendant.

DEPOSITION OF F. MURRAY HASKELL

December 29, 1954

\* \* \*

Cross-Examination

By Mr. Gemmill:

Q. This place that is referred to as King Salmon,  
is that out in the vicinity of Naknek?

A. You should distinguish between the two. First  
of all, Naknek proper is eight miles down the river  
and the place where our job was was actually called  
King Salmon, but because of geographical locations  
they named the other, the air base, as Naknek Air  
Base or King Salmon Air Base, whichever one you

prefer, but [8\*] it is easier to spot on the map, to find Naknek than it would be to find King Salmon.

Q. Well, these men were working at King Salmon? A. That is correct.

Q. Or near King Salmon?

A. That is correct.

Q. And that is about how far from Naknek?

A. About approximately eight miles down the river.

Q. What type of construction was taking place up there in October of 1951?

A. We were building this base.

Q. An air base?

A. No, it is a secret base.

Q. And the work was being performed for the United States Government?

A. That is correct.

Q. Who was the prime or general contractor up there?

A. Gaasland Construction Company.

Q. Gaasland. Did Gaasland Construction Company have the contract with the Government to construct this base? A. That is correct.

Q. Which you say is of a secret nature?

A. That is correct.

Q. Now, where did Haskell Plumbing and Heating Company come into the picture? Did Haskell Heating & Plumbing Company have a subcontract with the Gaasland Construction Company?

A. That is correct.

Q. And about when was that contract entered into—just approximately? [9]

A. I believe it was right in the neighborhood of May of that year.

Q. Of 1951?

A. Yes. Is that approximately right? I believe that is about right.

Q. And what was the nature of the work that the Haskell Construction Company agreed to perform for Gaasland Construction Company?

A. We agreed to install all the plumbing, utilities, heating, sheet metal work, and roofing.

Q. On the various and in the various buildings that would be constructed there at that base?

A. That is correct.

Q. Were you personally there at King Salmon or Naknek while this construction work was going on?

A. From time to time, yes.

Q. Were you there in October of 1951?

A. What is the date of the fire?

Mr. Ehrlichman: The 11th.

Q. (By Mr. Gemmill): October 11th.

A. I was there approximately two weeks after the fire.

Q. Were you personally acquainted with any of the plaintiffs in this action: Jimmy Weeks, Tommy Judson——

A. Yes, I know several of them.

Q. (Continuing): ——Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith? You knew all those men? A. Yes.

Q. Were they employees of the Haskell Plumbing & Heating [10] Company?



A. That is correct.

Q. And you as secretary of the corporation exercised some managerial authority?

A. That's right.

Q. Directed these men in their working?

A. I hired a superintendent who I directed, and as the superintendent directed the personnel underneath him.

Q. Where were these men employed, I mean, where were they contacted or where did they make application for employment with the Haskell Plumbing and Heating Company?

A. The request was sent into the local union for their hire.

Q. Through Seattle?

A. No, through Anchorage.

Q. Through Anchorage? A. Yes.

Q. That is, your contact then, the contact of the Haskell Plumbing and Heating Company was through the union at Anchorage?

A. We must hire all our personnel through the union, and the location of where these men are to be obtained is where there is a local union that takes control of that area.

Q. Were all of these plaintiffs whose names I read to you engaged in plumbing and heating work?

A. Yes.

Q. That is, their employment was essentially of the same kind? [11]

A. That is correct.

Q. Now, at the time that these plaintiffs were hired by Haskell Plumbing and Heating Company



where did they first report for work or in connection with their employment?

A. They reported right to King Salmon. Well, actually, we picked them up at the plane when they arrived on the airplane.

Q. Arrived where?

A. At the airplane, at King Salmon.

Q. Was there an air base there at King Salmon?

A. Yes.

Q. Did these men sign any kind of a contract, a written contract, regarding their employment up there at King Salmon?

A. No, nothing beyond the normal——

Q. What?

A. Nothing beyond the normal union agreement.

Q. Well, did you have, did Haskell Plumbing & Heating Company, have a written agreement with the plumbers' union? A. Yes, we did.

Q. Do you have that with you?

A. No, I don't.

Q. Are you familiar with the terms of it?

A. Yes, I am.

Q. And was that the only written agreement that existed between any of these plaintiffs and Haskell Plumbing & Heating Company?

A. That is correct. [12]

Q. It was through the representative of the union? A. That is correct.

Q. Did the contract with the union state what wages would be paid these workmen?

A. Yes.

Q. You remember what that was; an hourly rate? A. An hourly rate, yes.

Q. Something like three dollars and fifty cents an hour? A. Correct.

Q. And did the contract further state what would be furnished these various employees, and I am referring now to the plaintiffs here, in addition to the wages that would be paid them?

A. That is correct.

Q. Did the contract provide that these men would be furnished with housing or living facilities?

A. That is correct.

Q. And that they would be furnished room, or board, their meals? A. That's right.

Q. And this contract also—well, the contract provided that Haskell Plumbing & Heating Company would furnish these facilities to these various workmen, didn't it?

A. That is correct.

Q. Now when these men arrived on the job up there at King Salmon you say they first stayed at the Sky Motel? A. That is correct.

Q. At Naknek?

A. At King Salmon, actually.

Q. At King Salmon? [13] A. Yes.

Q. And who directed them to go to the Sky Motel? A. We did.

Q. The Haskell Plumbing & Heating Company?

A. Yes.

Q. Then I think you stated they stayed there for about two months?

A. That is correct.

Q. And then other facilities became available for them?      A. That is correct.

Q. And the other facilities consisted of the barracks or Quonset hut which burned down on October 11, 1951?      A. That's right.

Q. Who directed the men, meaning the plaintiffs in this action, to go from the Sky Motel over to the Quonset hut or barracks at King Salmon which burned down on the 11th of October, 1951?

A. I would say we did.

Q. And by "we" you mean, I assume——

A. Our company.

Q. (Continuing):      ——Haskell Plumbing & Heating Company.

A. The reason being that the limit of facilities at the Sky Motel were exhausted and there were too many men to stay at that location.

Q. You had too many men?

A. Well, not only ourselves, but all the contractors combined. There was too many men for the facilities.

Q. Who requested this Quonset hut or barracks which the plaintiffs occupied there at King Salmon after leaving the Sky Motel; who directed or requested the construction [14] or preparation of those facilities for these men who worked for you?

A. I wish you would repeat your question again.

The Reporter: (Reading):

"Q. Who requested this Quonset hut or barracks which the plaintiffs occupied there at King Salmon after leaving the Sky Motel; who directed or re-

requested the construction or preparation of those facilities for these men who worked for you?"

A. Gassland Construction Company.

Q. Did Haskell Plumbing & Heating Company make any request or have any agreement with the Gaasland Construction Company for the construction or preparation of those facilities for your men?

A. We were asked to submit the number of men that we would have to Gaasland so they could prepare to house the total number that would be required for all the different subcontractors on the job.

Q. Then is it your testimony that the Gaasland Construction Company was the owner of this Quonset hut or barracks which burned on October 11th, 1951?

A. That is correct.

Q. And the Haskell Plumbing & Heating Company had an agreement with the Gaasland Construction Company——

Mr. Ehrlichman: Well, now, I will object to that. What agreement do you mean?

Mr. Gemmill: Wait until I finish.

Q. (Continuing): ——whereby the Gaasland Construction [15] Company furnished these facilities for your men?

A. Yes; at a going rate.

Q. And did you have a written agreement or contract with Gaasland Construction Company?

A. In regard to housing and that?

Q. In regard to housing your employees up there.

A. No, sir, no more than I would have with

Universal Foods in Fairbanks or Anchorage where the same type of housing is available.

Q. Then what did Haskell Plumbing & Heating Company pay to the Gaasland Construction Company for the facilities that they furnished?

Mr. Ehrlichman: If you can recall.

A. I don't know the exact sum. It was added up as a total sales for all the man-days, a lump sum charged against us for the use of their facilities.

Q. And you are sure that there was no written agreement between Haskell Construction Company, or Haskell Plumbing & Heating Company, and the Gaasland Construction Company regarding that subject matter?

A. No, not to my knowledge.

Q. As far as you remember then it was just an oral agreement on the part of Haskell Plumbing & Heating they would pay so much per man-day for their employees?

A. It would be charged against our account.

Q. Was there any memorandum that you have ever seen or known about that set forth the terms or the amounts, the rate, that the Haskell Construction Company would pay?

A. No, sir. [16]

Q. There probably was something of that nature, wasn't there?

A. There was, but I don't recall it.

Q. Would the corporate records of Haskell Plumbing & Heating Company have such a memorandum if it existed?



A. If the records were brought down from the North, they would, I would say.

Q. And where are the corporate records?

A. At our establishment on 1509 Cornwall.

Q. Fifteen what?

A. 1509 Cornwall, Bellingham, Washington.

Q. I didn't get the name of that street.

A. 1509 Cornwall Avenue.

Q. Cornwall?

A. Yes. But to my knowledge, I don't believe—at least, I have never seen anything beyond an oral agreement.

Q. Now in your direct testimony you referred to Gaasland Construction Company as an independent contractor in furnishing these facilities for your men. Is your testimony definite now that as far as you know you had no written contract with the Gaasland Construction Company whatsoever upon that subject matter?

A. Upon feeding and housing?

Q. Yes. A. That's right.

Q. Would you explain then how you concluded, upon what facts did you base your conclusion that the Gaasland Construction Company was an independent contractor?

Mr. Ehrlichman: Now, just a minute. I am going to object to that question. The term [17] independent contractor is a legal term of art, and I think that probably the term was used in a question of mine rather than in testimony of Mr. Haskell.

Mr. Gemmill: That's right.

Mr. Ehrlichman: And I don't believe that Mr. Haskell should be called upon to set forth the elements of an independent contractor relationship as they are contemplated in the law. If counsel would like to put those elements to him step by step, and ask him whether or not they existed, I think it would be a proper question, but I will object to its form when it calls for the evidentiary elements of what amounts to a legal conclusion, which I probably put inadvertently.

Mr. Gemmill: All right, I would like to state that the reason for going into that subject matter here in the manner in which I am doing so is because counsel for defendant submitted a question in which he used the term independent contractor when referring to Gaasland Construction Company in connection with the furnishing of housing facilities for the employees of the Haskell Construction Company. The witness stated that the Gaasland Construction Company was an independent contractor. Now I am asking the witness upon what facts he bases his conclusion that Gaasland Construction Company was an independent contractor in the furnishing of housing [18] facilities for the plaintiffs in this action.

Mr. Ehrlichman: Well, Counsel, in order to circumvent this impasse, I will suggest that on redirect I will go into each element which made up the independent contractor relationship, and then on recross you can go into that more fully. How will that be?



Mr. Gemmill: No, under our stipulation he has to answer, doesn't he?

Mr. Ehrlichman: Yes; if he knows.

A. I am not quite certain what you are asking.

Mr. Ehrlichman: That's what I thought.

Q. (By Mr. Gemmill): Let me start it this way. Do you know what legally constitutes an independent contractor? A. No, sir.

Q. What? A. No, sir.

Q. Then when you answered affirmatively to a question which your counsel submitted to you using the term independent contractor, you did not understand the legal significance of the term independent contractor, did you? A. No, sir.

Q. Do you know what elements distinguish an independent contractor, the relationship of an independent contractor from those of an employee or other relationships, legal relationships of a similar nature?

Mr. Ehrlichman: Well, I have a running objection to all these questions of law in here. [19]

I think it is unnecessarily prolonging the deposition. The witness doesn't set himself up as a lawyer.

A. Well, might I ask what an independent contractor is?

Q. Well, now, I am just trying to find out what you understood or what was in your mind when you make an affirmation to a question counsel put to you, when you affirmed that the Gaasland Construction Company was an independent contractor. I will ask you this. Now, along with that, and in ex-

planation of the testimony that you gave on direct examination, from a legal standpoint you don't know now whether Gaasland Construction Company actually was an independent contractor in the furnishing of the facilities, of the housing facilities, for your men at King Salmon?

Mr. Ehrlichman: I will object to that as calling for the legal conclusion of the witness. You can go ahead and answer, if you can, Mr. Haskell.

A. Would you repeat the question?

The Reporter: (Reading):

“Q. I will ask you this. Now, along with that, and in explanation of the testimony that you gave on direct examination, from a legal standpoint you don't know now whether Gaasland Construction Company actually was an independent contractor in the furnishing of the facilities, of the housing facilities, for your men at [20] King Salmon?”

A. Well, in answer to that, my testimony was that Gaasland Construction Company did furnish the housing and feeding for our men.

Q. But what the legal relationship was between Gaasland Construction Company and Haskell Plumbing & Heating Company you wouldn't venture to state, would you? A. No.

Q. In other words, you don't know what the legal elements are that go to make up the relationship of an independent contractor?

A. No.

Q. Under the terms of your contract with the representative union at Anchorage in connection with the hiring of the plaintiffs in this case, at King

Salmon, you were aware and conscious of the obligation of the Haskell Plumbing & Heating Company to furnish these men, your employees, with housing facilities and with their meals during the time they were performing their contract with your company?      A. That is correct.

Q. And you folks, meaning the Haskell Plumbing & Heating Company, undertook to do that?

A. That's right.

Q. And in doing that you did the things that you have already testified here that were done by the Haskell Plumbing & Heating Company to furnish the men with those facilities?

A. That's right.

Q. Did Haskell Plumbing & Heating Company ever through any [21] of its employees make any inspection of these barracks or of the meals, food and so on, that was being furnished to your employees?

A. I have been in the buildings, all the buildings, yes.

Q. Did you check on those things from time to time?

A. No, not from time to time. I was there—pardon me—either myself or my agent would, which was my superintendent, would receive any complaints that someone might bring forth, which we would in turn transfer to Gaasland Company's superintendent who would see that they were done.

Q. Did you personally receive any complaints from any of the men?      A. No, sir.

Q. But your agent did receive some?

A. I don't know. I have no knowledge.

Q. But you say if any complaints would or should come in, then the Haskell Plumbing & Heating Company would endeavor to make what correction was necessary by contacting the Gaasland Construction Company?

Mr. Ehrlichman: Just a minute. I will object to that as being a question calling for speculation as to what might have been done in a situation which obviously from the testimony never happened, and, therefore, is immaterial.

Mr. Gemmill: I am simply following up what you stated there about complaints, if any complaint did come in.

Mr. Ehrlichman: But the witness said that there were never any complaints to his knowledge, [22] so your question calls for speculation on his part as to what he would have done if there had been any complaints. I don't think that is helpful on this inquiry, but you may answer, realizing that it does call for your speculation, Mr. Haskell.

A. The men could go, which they have done directly, go right direct to Gaasland personnel and ask them to correct any measure that might need to be corrected, and there is certain rules and regulations of the Territory that we must abide by, and, therefore, we—well, I think I stated. Just skip that last.

Q. By rules and regulations, you mean the Territorial laws?      A. That's right.

Q. With reference to health and sanitation?

A. That is correct.



Q. And so on? A. Yes.

Q. Living standards? A. That's right.

Q. Did Haskell Plumbing & Heating Company give any general instructions or directions regarding what these men should be fed in the way of food? A. No.

Q. What food should be purchased?

A. No, sir.

Q. This particular Quonset hut or barracks where these plaintiffs lived, how was it heated?

Mr. Ehrlichman: If you know. [23]

A. By a space heater, I believe.

Q. Where was it situated in the building? By that I mean, was there a basement or was it sitting on the floor?

A. We had no basements up there.

Q. No.

A. It would be on the main floor.

Q. It was sitting on the floor of the Quonset hut? A. To my knowledge, yes.

Q. Was there more than one heater in this particular hut that burned?

A. That I don't know.

Q. It used oil for fuel?

A. That's right.

Q. Did you or any of your men have anything to do about the inspection of that heater?

A. Gaasland Construction had a bull cook—bull cooks.

Q. Had what?

A. Bull cooks, and what you call the camp man-

ager, and they made periodic inspections and cleaned up, made beds, in the quarters.

Q. When you were up there at King Salmon, where did you stay, where did you live?

A. I lived in the quarters right next to the mess hall.

Q. How often, if you can remember, would you, while living up there, be in this particular hut that burned?

A. I believe during the whole duration I was at the building two times.

Q. Just twice all the time that you were there?

A. That's right.

Q. Did you ever go in there to talk to any of your men—the [24] plaintiffs?

A. In a social manner, yes.

Q. Was your superintendent the man who is directly over the plaintiffs in this action?

A. That's right.

Q. And he would see the men there in the barracks probably every day?

A. He lived in the quarters right next to the mess hall also. How many times he was at the barracks that burnt, I have no knowledge.

Q. Now in the relationship between your superintendent and the plaintiffs in this action, when they would have any necessity of getting together to receive instructions, consultation and so on, did they have any meeting place other than the barracks there where they lived?

A. There was one other quarters made available

for social. Any meeting pertaining to the job would be held on the job site itself.

Q. And was that also maintained by the Gaasland Construction Company?

Mr. Ehrlichman: What are you referring to, Counsel?

Mr. Gemmill: These other quarters.

Mr. Ehrlichman: The social hut, you mean?

Mr. Gemmill: Yes.

A. Yes.

Q. Would it be possible for you to examine the records in your office to determine whether you have a memorandum or a copy of a memorandum pertaining to the compensation [25] which Haskell Plumbing & Heating Company was to pay to Gaasland Construction Company for the maintenance of their men there at King Salmon?

Mr. Ehrlichman: Just a minute. I am going to state for the record that had counsel wished to see those records or any agreement, or anything pertaining to this case, he could very easily have requested them in advance and we would have been happy to oblige by searching for them. Obviously now we are in the middle of the holidays and it would be a considerable inconvenience at this late date to attempt to produce an instrument of this sort from ancient records, and I think I must insist that counsel obtain proper process if he wants us to produce any business records so close to trial, and I am going to advise Mr. Haskell to consider this statement of mine as a sufficient response to that question.



Mr. Gemmill: In other words, you are instructing him not to answer.

Mr. Ehrlichman: I don't see as his answer would be material in view of my comment upon that question. In other words, I think that any production of those records should be by proper process timely made.

Mr. Gemmill: He is virtually instructed not to answer then, isn't he? I just wanted to get the record straight.

Mr. Ehrlichman: No, I did not instruct him not to answer. My statement is that I think my [26] statement is a sufficient answer to your question, and that is that those records were available at all times during the pendency of this action and have never been sought by process or even by informal request until this moment, and I am afraid that it is an untimely request at this time under the circumstances. Now, certainly Mr. Haskell can answer your question in any way he sees fit.

Mr. Gemmill: Okeh; just so we get an answer in here.

A. We have records, but it would certainly be a painstaking long job to dig down there and pull out the record.

Mr. Ehrlichman: And I may say that on the basis of this witness' previous testimony, it appears that there is some question as to the existence of such a document.

Mr. Gemmill: Well, I am asking merely this, if he would be willing to look.

Mr. Ehrlichman: And I am advising him that

whether he is willing to look or not is immaterial and I don't believe it is necessary for him to answer that question under the circumstances.

Q. (By Mr. Gemmill): Haskell Construction Company paid the plaintiffs their wages periodically, didn't they? A. Weekly, yes.

Q. Weekly; in accordance with your union contract? A. That is correct. [27]

Q. And none of the plaintiffs were required to pay either the Haskell Plumbing & Heating Company or to Gaasland Construction Company anything for their room and board?

A. That's right.

Q. You as secretary of Haskell Plumbing & Heating Company were at all times satisfied, I gather from what you have said, that the Gaasland Construction Company was furnishing a proper and suitable place for your men while they were working there?

Mr. Ehrlichman: I will object to that as immaterial. I still—well, let it stand at that.

A. The setup that they had was very similar, if not superior, to other camps we had.

Q. In other words, it met your requirements?

A. It wouldn't be my requirements; it would be the men's requirements.

Q. It met the requirements of the Haskell Plumbing & Heating Company?

Mr. Ehrlichman: I think that question has been answered.

A. Again I repeat, the men's requirements. I have no say-so what the men want.

Q. Well, to illustrate what I am getting at, if you at any time had considered that the facilities furnished by Gaasland were inadequate, wouldn't it have been the duty of Haskell Plumbing & Heating Company to do something about it?

Mr. Ehrlichman: I object to that as calling for the conclusion of the witness, and also a question that calls for speculation and conjecture [28] on the part of the witness, and is a question that is immaterial in this inquiry. Go ahead and answer.

Q. (By Mr. Gemmill): His objection is for the record. You may answer.

A. If the men found that the quarters were not satisfactory, then we would be forced to locate other quarters and purchase same from someone else.

Q. In other words——

A. (Interposing): Be similar to a hotel. If they didn't like a hotel they are living in, and we had told them that would be a nice place to stay, why then they can look for another quarters. They also have the privilege of accepting money in lieu of quarters.

Q. But none of the plaintiffs in this case did that? A. Because there was nothing available.

Q. Your contract with the union, that is, the contract between the Haskell Plumbing & Heating Company and the union at Anchorage, provided that you would furnish them with suitable and adequate living facilities? A. That's right.

Mr. Ehrlichman: Now, I am going to object to that question as assuming that union represented these men.

Q. (By Mr. Gemmill): Well, the union you mentioned that you had your contract with is the union I mean?

A. Yes.

Mr. Gemmill: That is all.

\* \* \*

[Endorsed]: Filed January 3, 1955. [29]